

**IN THE UNITED STATES DISTRICT COURT FOR THE  
MIDDLE DISTRICT OF ALABAMA  
NORTHERN DIVISION**

<b>UNITED STATES OF AMERICA</b>	)	
	)	
<b>V.</b>	)	<b>CASE NO: 2:06-cr-108-MHT</b>
	)	
<b>GARETT ALBERT DYKES</b>	)	

**UNOPPOSED MOTION TO SUPPLEMENT THE RECORD**

**COMES NOW** the Appellant, Garrett Albert Dykes (“Mr. Dykes”), by and through his undersigned counsel, Christine Freeman, and pursuant to Federal Rule of Appellate Procedure 10, respectfully moves this Honorable Court to permit him to supplement the record on appeal. As grounds for granting this Motion, undersigned counsel sets forth the following:

1. Mr. Dykes is arguing in his appeal brief that 18 U.S.C. §2251(a) is unconstitutional on its face because it exceeds Congress’ power under the Commerce Clause of the United States Constitution by regulating activity that is purely local and noncommercial.

2. Mr. Dykes also argues in his appeal brief that 18 U.S.C. §2251(a) is unconstitutional as applied to the facts of his case because his production of one videotape containing child pornography, which never left his home results in an attenuated connection between his activity and interstate commerce. Additionally, Mr. Dykes asserts in his appeal brief that this Court’s holding in *United States v. Maxwell*, 446 F.3d 1210 (11th Cir. 2006), misapplies the U.S. Supreme Court’s opinion in *Gonzalez v. Raich*, 545 U.S. 1 (2005).

3. In an effort to support these arguments, Mr. Dykes’ makes reference to the criminal sentence of imprisonment entered against him on October 27, 2006, in the Circuit Court of Elmore

County, Alabama for, among other things, production of obscene material involving a person under twelve years of age in violation of Alabama Code 13A-12-197.

4. The sentencing hearing transcript from the Circuit Court of Elmore County, Alabama has not previously been made a part of the record in this case. However, Mr. Dykes' seeks to have this sentencing transcript made a part of the record on appeal.

5. Mr. Dykes is currently incarcerated.

6. The United States Attorney involved in this case has indicated that he does not oppose this motion or the supplementation of the record on appeal.

7. Although the materials sought to be added may not "conclusively resolve [the] issue on appeal, [this Court] may allow supplementation in the aid of making an informed decision." *United States v. Millon Air, Inc.*, 341 F.3d 1220, 1225 n.4 (11<sup>th</sup> Cir. 2003)(citing *Cabalceta v. Standard Fruit Co.*, 883 F.2d 1553, 1555 (11<sup>th</sup> Cir. 1989).

**ACCORDINGLY**, Garrett Dykes respectfully requests that this Court grant his Motion to Supplement the Record on Appeal.

Respectfully submitted,

**s/Christine A. Freeman**  
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**CERTIFICATE OF SERVICE**

I hereby certify that on January 24, 2007, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to the following:  
Susan Redmond, Esquire, Assistant United States Attorney, One Court Square, Suite 201,  
Montgomery, Alabama 36104.

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**APPENDIX A**



PROCEEDINGS

1  
2 BY THE COURT: Dub, this is case number  
3 CC-05-213, State of Alabama versus Garrett  
4 Dykes, Mr. Dykes is here with his lawyer Mr.  
5 Wayne Perdue, having previously entered pleas  
6 of guilt to four counts of production of  
7 obscene matter involving a person under twelve  
8 years of age, and nine counts of sexual abuse  
9 in the first degree. We're here today for  
10 sentencing. Wayne, have y'all had an  
11 opportunity to review the report?

12 BY MR. PERDUE: We have.

13 BY THE DEFENDANT: Yes, sir.

14 BY THE COURT: Do you have anything to  
15 add to it?

16 BY MR. PERDUE: No, sir.

17 BY THE DEFENDANT: No, sir, Your Honor.

18 BY THE COURT: All right. The court  
19 having accepted your pleas of guilt,  
20 adjudicates you guilty to four counts of  
21 production of obscene matter involving a  
22 person under twelve years of age, and nine  
23 counts of sexual abuse in the first degree. Do  
24 you have anything to say to why the sentence  
25 of law should not be imposed on you, or

1 anything that you'd like to say before the  
2 court imposes sentence?

3 BY THE DEFENDANT: No, sir, Your Honor.

4 BY THE COURT: All right. Pursuant to  
5 the plea agreement, the court sentences you to  
6 serve a term of twentyone years in the  
7 penitentiary on these four counts of  
8 production of obscene material involving a  
9 person under the age of twelve;

10 And ten years in the penitentiary on the  
11 nine counts of sexual abuse in the first  
12 degree.

13 The court orders that you receive credit  
14 for time that you have served, that each of  
15 these sentences be served concurrently each  
16 with the other, and also concurrent with your  
17 federal time.

18 Further in this case, the court orders  
19 that you pay court costs, fifty dollars  
20 Victims Compensation Commission, restitution  
21 in the amount of ten thousand eight hundred  
22 seventy six dollars and thirty-three cents to  
23 the Alabama Crime Victims Compensation  
24 Commission, and reimburse the state seven  
25 hundred fifty dollars to be applied against

1 Mr. Perdue's attorney's fees.

2 Payment of those monies would be  
3 conditions your release or parole, which in  
4 other words, when you get out, you need to  
5 touch base with the clerk's office and set up  
6 a payment schedule to pay these monies.

7 BY MR. GOGGANS: Your Honor, he's in  
8 primary federal custody, and it's their  
9 understanding, this sentence, he will serve  
10 the federal time, that's where he would be  
11 serving that federal time, and this would be  
12 running CC with that.

13 BY MR. PERDUE: Further, the concurrent  
14 time begins January 10, 2005. He's been in  
15 confinement since that time, and that's the  
16 plea agreement on the state and federal side,  
17 that he gets credit for the time he's been in  
18 jail, on both sides.

19 BY THE COURT: Right. And January 10,  
20 '05?

21 BY MR. PERDUE: Yes.

22 BY THE COURT: I knew he had been in jail  
23 since he had been arrested, but I didn't know  
24 what the date was.

25 BY THE DEFENDANT: Thank you, Your Honor.



1 BY THE COURT: All right. Good luck, Mr.  
2 Dykes.

3 BY THE DEFENDANT: I appreciate it.

4 BY THE COURT: All right, Thank you.

5 (Court adjourned)

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1 C E R T I F I C A T E

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3 STATE OF ALABAMA,

4 COUNTY OF ELMORE

5

6 I, DUB HARRIS, Special Roving Court  
7 Reporter of the 19th Judicial Circuit for the State  
8 of Alabama, do hereby certify as follows:

9 THAT I reported in shorthand the  
10 foregoing proceedings in the foregoing styled  
11 Cause at the time and place stated heretofore;

12 THAT I later reduced my shorthand notes  
13 to computer-aided transcription, and the foregoing  
14 pages contain a full, true and correct transcript  
15 of the proceedings and testimony as herein set  
16 out;


17 THAT I am neither of kin nor of counsel  
18 to the parties to said cause, nor in any manner  
19 interested in the results thereof.

20 DONE this 1st day of November, 2006.

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DUB HARRIS, REPORTER

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